

## BILL ANALYSIS

Senate Research Center

S.B. 103  
By: Moncrief  
Finance  
6-28-95  
Enrolled

### BACKGROUND

Currently, no state agency has statutory responsibility for coordinating guardianship in the state. The Department of Protective and Regulatory Services, through the Adult Protective Services program, provides some guardianship and a few private programs exist. No specific authority exists to coordinate, educate, or provide resources for these programs. The Senate Interim Committee on Health and Human Services included in its report on guardianship a recommendation that an Guardianship Resource Board be established. The goal is to develop a statewide, coordinated system of guardianship programs at the county and regional levels.

### PURPOSE

As enrolled, S.B. 103 creates the Guardianship Resource Board as an agency of the state.

### RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is granted to the board of the Guardianship Resource Board in SECTION 1 (Sections 161.021 and 161.023(a), Human Resources Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Human Resources Code, by adding Title 11, as follows:

#### TITLE 11. PUBLIC GUARDIANS

#### CHAPTER 161. GUARDIANSHIP RESOURCE BOARD

#### SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Sec. 161.001. BOARD. (a) Provides that the Guardianship Resource Board (board) is created and is authorized to create a nonprofit corporation organized pursuant to Article 1396-1.01 et seq., V.T.C.S. (Texas Non-Profit Corporation Act). Provides that on creation of the nonprofit corporation, the board becomes the board of the nonprofit corporation.

Sec. 161.002. SUNSET PROVISION. Subjects the board to the Texas Sunset Act (Chapter 325, Government Code) and on September 1, 2007, abolishes the board unless continued in existence as provided by that chapter.

Sec. 161.003. DEFINITIONS. Defines "board," "commissioner," "center," "guardianship program," and "incapacitated person."

Sec. 161.004. COMPOSITION OF BOARD. (a) Establishes the criteria for the composition of the board.

(b) Requires the governor to appoint the board members and designates the required qualifications.

(c) Requires the presiding judge of the statutory probate courts to appoint two persons who are judges of statutory probate courts in the state.

- (d) Establishes the composition of the nonvoting ex officio membership.
- (e) Requires appointments to the board to be made without regard to certain personal characteristics.
- (f) Prohibits a person from being appointed to the board if the person or person's spouse uses or receives a substantial amount of tangible goods, services, or funds from the board.

Sec. 161.005. COMPENSATION OF BOARD MEMBERS. (a) Provides that an appointed member of the board is entitled to per diem as set by the General Appropriations Act for each day that the member engages in board business.

- (b) Prohibits a board member from receiving compensation for service on the board. Provides that a board member may be reimbursed for actual and necessary expenses not exceeding the amount authorized to be paid to a member of the legislature for similar expenses.

Sec. 161.006. OFFICERS. Requires the board to elect officers.

Sec. 161.007. TERMS OF BOARD MEMBERS. Sets forth the terms board members are to serve.

Sec. 161.008. MEETINGS. Requires the board to hold and make available to the public quarterly meetings.

Sec. 161.009. REMOVAL OF BOARD MEMBER. Establishes the circumstances under which a board member may be removed from the board.

Sec. 161.010. RESTRICTIONS ON BOARD MEMBERSHIP AND EMPLOYMENT. (a) Prohibits persons who have a conflict of interest from being a member or employee of the board.

- (b) Prohibits a person required to register as a lobbyist under Chapter 305, Government Code, from serving as a board member or general counsel to the board.

Sec. 161.011. EXECUTIVE DIRECTOR. (a) Requires the board to appoint an executive director.

- (b) Provides that salaries and other expenses are paid with funds appropriated to the board for those purposes or with funds from other sources.

Sec. 161.012. PERSONNEL MATTERS. (a) Authorizes the executive director to employ no more than seven employees for the administration of the center's duties.

- (b) Requires the executive director or the director's designee to develop an intraoffice career ladder program.

- (c) Requires the executive director or designee to develop a system of annual performance evaluations which merit pay must be based.

- (d) Requires the board to provide to its members and center employees information regarding qualifications under applicable laws relating to standards of conduct for state officers and employees.

- (e) Requires the board to develop policies that clearly separate the respective responsibilities of the board and the executive director.

- (f) Requires the executive director or designee to prepare and maintain a written policy ensuring a program of equal employment opportunity under which all personnel

transactions are made without regard to certain personal characteristics. Sets forth the required contents of the policy statement.

(g) Requires the annual policy statement under Subsection (f) to be filed and updated annually with the governor's office. Requires the governor's office to develop a biennial report to the legislature based on the information submitted.

Sec. 161.013. MERIT SYSTEM. Authorizes the board to establish a merit system for its employees that may be maintained in conjunction with other state agencies required by federal law to operate under a merit system.

Sec. 161.014. FINANCES. (a) Requires the executive director to prepare and submit to the board for approval a biennial budget necessary to carry out the duties of the center. Requires the budget to include an estimate of all the funds the board will receive and all federal funds to be allocated to the state for the center's purposes.

(b) Requires the executive director to submit to the board a request for an appropriation by the legislature if the estimate of total funding from all sources is determined by the executive director to be insufficient for the center to carry out its duties.

(c) Authorizes the executive director to submit a request for such an appropriation to the board if the executive director determines that federal matching funds will be made available to the center if and only if a legislative appropriation is made.

(d) Requires the board to submit the request to the Legislative Budget Board and the governor in the manner prescribed by law if the board approves a request made under Subsection (b) or (c).

(e) Requires the board to file annually with the governor and the presiding officer of each house of the legislature, a complete and detailed written report accounting for all funds. Requires the form of the annual report and reporting time to be provided in the General Appropriations Act.

(f) Provides that the financial transactions of the board are subject to audit by the state auditor under Chapter 321, Government Code.

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD AND CENTER

Sec. 161.021. RULES. (a) Requires the board to adopt rules governing the function of the center.

(b) Authorizes the board, by rule, to delegate its rights, powers, and duties to the executive director.

Sec. 161.022. GENERAL FUNCTIONS OF CENTER. Sets forth the requirements of the center regarding its functions and services.

Sec. 161.023. STANDARDS. (a) Requires the center, by rule, to adopt minimum standards for the provision of guardianship and related services for certain entities.

(b) Requires the standards adopted by the center under this section to be designed to protect the interests of an incapacitated person or other person who needs assistance making decisions concerning the person's own welfare or financial affairs.

(c) Defines "private professional guardian."

Sec. 161.024. CONTRACTS. Authorizes the board to contract with another person or entity to file an application to be appointed as a guardian, or provide assistance to a person to make a decision concerning the person's own welfare for financial affairs, if no

guardianship program to provide assistance exists.

Sec. 161.025. FUNDING AND DONATIONS. (a) Authorizes the board or the center to accept and solicit gifts or grants of money or property from public or private sources for the purposes of this chapter.

(b) Authorizes the center to collect and receive funds from personal representatives of estates of deceased persons in administration in courts of this state and manage, hold and administer such funds pursuant to Sections 427 through 433, Texas Probate Code, through the board.

(c) Authorizes the center, through the board, to collect and receive funds from county clerks who have received and managed such funds pursuant to Section 887, Texas Probate Code, and to use such funds in performance of the general functions assigned to the center under this chapter.

Sec. 161.026. COMMUNITY TRUST. (a) Defines "beneficiary," "follow along services," and "surplus trust funds."

(b) Authorizes the center to establish a community trust. Sets forth the required provisions of the trust.

(c) Sets forth the requirements of the center regarding the management of the community trust.

(d) Sets forth the authorized actions of the center regarding the management of the community trust.

(e) Requires the trustor to receive a written statement of the services to be provided to the beneficiary at the time a contribution, bequest, or assignment of insurance proceeds is made. Requires the statement to include a starting date for the delivery of services or a condition precedent, such as the death of the trustor, which shall determine the starting date. Requires the statement to describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary.

(f) Authorizes the center to accept gifts and use surplus trust funds for the purpose of qualifying as a beneficiary any indigent person whose family members lack the resources to make a full contribution on the person's behalf. Provides that the extent and character of the services and selection of a beneficiary under this subsection are at the discretion of the center.

(g) Authorizes the center to accept gifts to meet start-up costs, reduce the charges to the trust of the cost of administration, and for any other purpose that is consistent with this chapter. Requires gifts made to the trust for an unspecified purpose to be used by the center either to qualify indigent persons under Subsection (f) or to meet any start-up costs that the trust incurs.

(h) Authorizes the center to agree to fulfill any special requests made on behalf of a beneficiary as long as the requests are consistent with this chapter, and provided that an adequate contribution has been made for this purpose on behalf of a beneficiary. Authorizes the center to agree to serve as trustee for any individual trust created on behalf of a beneficiary, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other condition, as long as the individual trust is consistent with the purposes of this chapter.

(i) Authorizes the center in its sole discretion to provide compensation for any contribution to the trust to any trustor who withdraws a beneficiary designated by the trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust

with regard to an individual beneficiary for reasons other than the death of a beneficiary.

(j) Prohibits the center from expanding trust funds for any goods or services of quality comparable to those available to any particular beneficiary through any governmental or charitable program, insurance, or other sources.

(k) Prohibits the center from using surplus trust funds to make any charitable contribution on behalf of any beneficiary or any group or class of beneficiaries.

(l) Prohibits the beneficiary's interest in the community trust from being deemed to be an asset for the purpose of determining income eligibility for any publicly operated program, nor shall that interest be reached in satisfaction of a claim for support and maintenance of the beneficiary. Provides that no agency shall reduce the benefits of services available to any individual because that person is the beneficiary of the community trust.

(m) Prohibits the community trust from being subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trust.

(n) Requires the community trust to be settled by filing a final accounting in a district or statutory probate court. Authorizes the attorney general to bring an action for the dissolution of the center in the district court for the purpose of terminating the trust or merging it with another charitable trust.

(o) Provides that no trustee or any private individual shall be entitled to share in the distribution of any of the trust assets on dissolution, merger, or settlement of the community trust. Requires a district or statutory probate court of Travis County to distribute all of the remaining net assets of the community trust in a manner that is consistent with the purposes this chapter.

Sec. 161.027. REPORT. Requires the board to submit to the legislature a biennial report by February 1 of each odd-numbered year.

SECTION 2. Amends Section 3, Texas Probate Code, to redefine "person."

SECTION 3. Amends Chapter X, Texas Probate Code, as follows:

#### CHAPTER X. PAYMENT OF ESTATES TO THE GUARDIANSHIP RESOURCE BOARD

Sec. 427. New heading: WHEN ESTATES TO BE PAID TO THE GUARDIANSHIP RESOURCE BOARD. Replaces the duties of the state treasurer with the Guardianship Resource Board.

Sec. 428. New heading: INDISPENSABILITY OF GUARDIANSHIP RESOURCE BOARD AS PARTY. Makes conforming changes.

Sec. 429. New heading: PENALTY FOR NEGLECT TO NOTIFY GUARDIANSHIP RESOURCE BOARD. Makes conforming changes.

Sec. 430. New heading: RECEIPT OF GUARDIANSHIP RESOURCE BOARD. Makes conforming changes.

Sec. 431. New heading: PENALTY FOR FAILURE TO MAKE PAYMENTS TO GUARDIANSHIP RESOURCE BOARD. Makes conforming changes.

Sec. 432. New heading: GUARDIANSHIP RESOURCE BOARD MAY ENFORCE PAYMENT AND COLLECT DAMAGES. Makes conforming changes.

Sec. 433. New heading: SUIT FOR THE RECOVERY OF FUNDS PAID TO THE GUARDIANSHIP RESOURCE BOARD. Makes conforming changes.

SECTION 4. Amends Section 887, Probate Code, by amending Subsections (b) and (f) and adding Subsections (h) and (i), as follows:

(b) Requires the clerk of the court to make a written report to the court of the status of all investments held by the clerk under this section. Sets forth the required contents of the report regarding each investment held by the clerk.

(f) Authorizes the creditor or the subsequent personal representative of the creditor or the creditor's heirs to withdraw the money from the clerk as provided for in Subsection (c), if a person who is authorized fails to do so. Authorizes the withdrawal to be made at any time before the clerk has delivered the money to the Guardianship Resource Board under Subsection (h) of this section without special bond for the purpose by the person entitled to the withdrawal under certain conditions.

(h) Sets forth the actions required by the clerk of the court regarding a person who does not withdraw the money from the clerk as authorized by Subsection (f) or (g).

(i) Prohibits the board from being required to give bond or security for receiving the money from the clerk, and the receipt from the board for the payment or the canceled check or warrant by which the payment was made shall be sufficient evidence of the disposition of the payment. Provides that after compliance with the notice provisions of Subsection (h) of this section and payment to the board, the clerk of the court is relieved of further responsibility to the creditor, the personal representative of the creditor, the heirs of the creditor, or the board for the disposition and management of the money, and on receipt the board shall have full title to the money received from the clerk as against any further claim to the money by such persons, their successors, or those claiming by or through any of those persons or successors.

SECTION 5. (a) Requires the governor to appoint seven of the initial board members of the board so that three members' terms expire February 1, 1997, two expire February 1, 1999, and two terms expire February 1, 2001.

(b) Requires the presiding judge of the statutory probate courts to appoint three of the initial members of the board created by this Act so that one member's term expires February 1, 1999, and one member's term expires February 1, 2001.

SECTION 6. Requires the executive director of the board to file the first policy statement before September 1, 1996.

SECTION 7. Effective date: September 1, 1995, and the Guardianship Resource Board is created on that date.

SECTION 8. Emergency clause.